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No. 83-572

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

FLOYD C. BALDWIN, *et al.*,
Petitioners,

v.

CITY OF WINSTON-SALEM, N.C., *et al.*,
Respondents.

On Petition for Writ of Certiorari
to the United States Court of Appeals
for the Fourth Circuit

MOTION OF NORTH CAROLINA FARM BUREAU FEDERATION, INC., *ET AL.*, FOR LEAVE TO FILE BRIEF AMICI CURIAE AND BRIEF OF NORTH CAROLINA FARM BUREAU FEDERATION, INC., *ET AL.*, AS AMICI CURIAE IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

Eugene Gressman
School of Law
University of North Carolina
Chapel Hill, N.C. 27514
(919) 962-4120

Attorney for Amici Curiae North Carolina Farm Bureau Federation, Inc., et al.

November 10, 1983

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to the United States Court of Appeals
for the Fourth Circuit

Motion of North Carolina Farm Bureau Federation, Inc., et al., for Leave to File Brief Amici Curiae

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The North Carolina Farm Bureau Federation, Inc., et all/ move this Court

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1/ The organizations filing this Motion as amici curiae are: North

[Footnote continued]

for leave to file the attached brief amici curiae pursuant to Rule 36.1 of

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[Continued from previous page]

Carolina Farm Bureau Federation, Inc.; North Carolina State Grange; Winston-Salem Chapter of NAACP; Citizens Opposed to Annexation by Valdese; Forsyth Citizens Opposing Annexation, Inc. -- Chapter II; Franchised Garbage Collectors of Forsyth County; Shasta Lane Citizens Opposing Annexation; North Albemarle Community Association; Rural Gilford TEA Party; Opponents of Forced Annexation, Inc.; New Hanover Right to Vote Association; Crowfield Condominium Association; Western Carolina Industries, Inc.; Ballentree Homeowners Association, Inc.; South Side Shopping Center; Skyline Sanitary Service; Save Our Suburbs; N.C. League of Concerned Citizens; Concerned Citizens Against Involuntary Annexation; Citizens For Fair Growth; Gaston County Taxpayers Association; Burke County Property Owners and Taxpayers Association; Little Yellow Mountain Property Owners Association; People of Oak Hill Against Forced Annexation; Cumberland County Fire Chiefs Association; Opponents of Forced Annexation.

the Rules of the Court. (Respondents City of Winston-Salem, N.C., et al., have refused to consent to the filing of a brief amici curiae.) Amici organizations represent or serve more than 460,000 North Carolina citizens who live, work, or own property in areas recently annexed, currently being annexed, or threatened with annexation by North Carolina cities, or who otherwise are or would be affected by such annexations.

These organizations and the persons they represent and serve, which are described in Appendix A, support the petition for writ of certiorari because the judicial review provision of the North Carolina annexation statute -- N.C. Gen. Stat. § 160A-50, found at Appendix F of the petition for writ of

certiorari -- prohibits amici from raising significant federal constitutional issues in North Carolina state court proceedings challenging annexations. For example, persons represented by amicus North Carolina Farm Bureau Federation, Inc., cannot assert in North Carolina state courts that annexations that arbitrarily engulf vast amounts of farm land undeveloped for urban purposes are unconstitutional under the due process clause of the Fourteenth Amendment. Moreover, members of amicus Winston-Salem Chapter of NAACP may not attack an annexation in a North Carolina state court for being motivated by a racially discriminatory purpose. In addition, under the opinion of the Court of Appeals for the Fourth Circuit in the case before this Court, persons

cannot challenge an annexation in federal court on the ground that it is arbitrary and capricious and thus unconstitutional. North Carolina citizens, including those amici represent, are thus left to oppose state annexations stripped of the ability to raise fundamental constitutional issues.

As demonstrated by the number of amici supporting the petition for writ of certiorari, there is widespread concern over North Carolina's unconstitutional procedure for reviewing annexations. This Court should grant amici's request to file the attached brief to allow them to express their concern and to explain why fundamental constitutional doctrine requires that

the petition for writ of certiorari be issued.

Respectfully submitted,

Eugene Gressman
School of Law
University of North Carolina
Chapel Hill, N.C. 27514
(919) 962-4120

Attorney for Amici Curiae
North Carolina Farm
Bureau Federation, Inc.,
et al.

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QUESTIONS PRESENTED FOR REVIEW

1. Should this Court limit the broad dicta in Hunter v. City of Pittsburgh, which the Fourth Circuit construed to effectively make the due process clause of the Fourteenth Amendment inapplicable to municipal annexations?

2. Does the due process clause of the Fourteenth Amendment to the United States Constitution prohibit annexations by municipalities that are arbitrary and capricious?

3. Does the judicial review provision of the North Carolina annexation statute violate the due process clause on its face and as applied to the annexations before the Court because this provision does not allow state court review of significant

constitutional issues -- e.g., whether an annexation is arbitrary and capricious?

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Brief of North Carolina Farm Bureau Federation, Inc., et al., As Amici Curiae in Support of Petition for Writ of Certiorari

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INTEREST OF AMICI CURIAE

The interest of the North Carolina Farm Bureau Federation, Inc., et al., as amici curiae is set forth in the Motion

for Leave to File Brief Amici Curiae, pp. i-vi, supra.

REASONS FOR GRANTING THE WRIT

1. The Lower Courts Ruling That The Due Process Clause Of The Fourteenth Amendment Does Not Prohibit Arbitrary And Capricious Annexations Presents An Important Constitutional Question.

Before the Court are rulings in four cases challenging annexations by Winston-Salem or Charlotte, North Carolina. Plaintiffs alleged facts demonstrating that the annexations are arbitrary, capricious, unreasonable, and an abuse of discretion, and thus violate the Fourteenth Amendment's due process clause for some or all of the following reasons:

(1) Annexation boundaries arbitrarily have been gerrymandered (a) to

include valuable industrial property or huge amounts of agricultural land or other property not developed for urban purposes, whose annexation standing alone was impermissible, (b) to exclude other areas needing city services that have lower tax bases or would be more expensive to service (in one instance creating a virtual island of unincorporated land within a city), (c) to exclude tracts that qualify for annexation much closer to the city center than areas annexed, and (d) to exclude areas that are integral parts of the areas annexed.

(2) The annexations bring into the city areas with services superior to those the city provides, which did not need city services.

(3) They were motivated solely or primarily by a desire to increase the city's tax revenues or revenue-sharing funds.

(4) There has been an attempt to annex territory that, if it belongs in any municipality, should be in another one.2/

Moreover, plaintiffs alleged that, under the judicial review provision of the North Carolina annexation statute, N.C. Gen. Stat. § 160A-50, the annexations could not be subjected to the judicial review required by the due process clause because fundamental

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2/ Comparison of the complaints with the Fourth Circuit's opinion will demonstrate that the Court of Appeals mischaracterizes plaintiffs' allegations in these regards.

constitutional questions -- i.e., whether defendants' actions were arbitrary and thus offended due process principles -- could not be examined by the state courts.

All plaintiffs moved for partial summary judgment on this latter claim, setting forth supporting material facts that essentially were undisputed. In each case, the district court denied plaintiffs' motion for partial summary judgment and dismissed the suit. Relying on Berry v. Bourne, 588 F.2d 422 (4th Cir. 1978), the district courts ruled that Hunter v. City of Pittsburgh, 207 U.S. 161 (1907), "foreclose[d]" attacks on municipal annexations under the due process clause and that plaintiffs thus had failed to state a claim upon which relief can be granted.

Baldwin v. City of Winston-Salem, 544 F. Supp. 123, 124 (M.D.N.C. 1982); Raintree Homeowners Ass'n v. City of Charlotte, 543 F.Supp. 625, 627-28 (W.D.N.C. 1982); Brewer v. City of Winston-Salem, (unreported); Appendix D to petition for certiorari (hereinafter "Cert. App. __").3/

The Court of Appeals for the Fourth Circuit affirmed these rulings, relying mainly on Hunter. Baldwin v. City of Winston-Salem, 710 F.2d 132 (4th Cir.

3/ The district courts made no factual findings that the annexations at issue were not arbitrary and capricious. Nor did they conclude that the allegations were insufficient to allege arbitrary annexations. Such a finding would have been impermissible for numerous state cases have found arbitrary conduct in situations quite similar to those at bar. See, e.g., cases cited infra pp. 10-11, 29.

1983); Cert. App. A. After recognizing that the Fourteenth Amendment prohibits annexations that discriminate on racial grounds or against a class of voters, the court said:

> We think it plain . . . that the exercise by a state of the discretion accorded to it in structuring its internal political subdivisions is subject to judicial review under the Fourteenth Amendment only where that exercise involves the infringement of fundamental rights or the creation of suspect classifications.

710 F.2d at 135; Cert. App. A, 14a-15a.

Finding "[n]o ... fundamental right ... implicated" in this case, the court said:

> Given our conclusion that the Fourteenth Amendment is not violated where, as here, the proposed annexation does not impinge on fundamental rights or create suspect classifications, there is no right under the Fourteenth Amendment to

> challenge annexation decisions alleged merely to be arbitrary and capricious. There is, accordingly, no federal right to have state courts hear such challenges to allegedly arbitrary and capricious annexation decisions; the availability of such review is solely a matter of state law.

710 F.2d at 135 n.3 (emphasis added); Cert. App. A, 16a n.4.

The conclusion that the due process clause of the Fourteenth Amendment does not prohibit arbitrary and capricious annexations is wholly at odds with basic constitutional doctrine announced by this Court. It is commonplace law that the Fourteenth Amendment prohibits arbitrary state action, whether or not the right involved is considered to be "fundamental." See Ingraham v. Wright, 430 U.S. 651, 672-73 (1977); Wolff v. McDonnell, 418 U.S. 539, 558 (1974);

Slochower v. Board of Higher Education of New York, 350 U.S. 551 (1956); Nebbia v. New York, 291 U.S. 502 (1934). In Slochower, 350 U.S. at 559, the Court recognized that Mr. Justice Cardozo had viewed "the 'protection of the individual against arbitrary action' . . . as the very essence of due process. Ohio Bell Telephone Co. v. Public Utilities Commission, 301 U.S. 292, 302 [1937]."4/

Moreover, "the right to due process reflects a fundamental value in our American Constitutional system." Boddie v. Connecticut, 401 U.S. 371, 374 (1971). The Fourth Circuit's conclusion

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4/ In Wolff v. McDonnell, 418 U.S. at 558, this Court said that "[t]he touchstone of due process is protection of the individual against arbitrary action of government. . . ."

that there is no "fundamental" due process right to be free from arbitrary conduct simply is not tenable.

It is no answer to say that the due process clause applies only to matters other than annexations. This Court repeatedly has affirmed that both the due process and the equal protection clauses apply to "every" state action, including actions by municipalities. E.g., Plyler v. Doe, 451 U.S. 968 (1982); Avery v. Midland County, 390 U.S. 474, 480 (1968).5/

5/ See also Columbus Board of Education v. Penick, 443 U.S. 449, 457 n.5 (1979); Milliken v. Bradley, 418 U.S. 717, 744 (1974); Cooper v. Aaron, 358 U.S. 1, 16-17 (1958); Standard Computing Scale Co. v. Farrell, 249 U.S. 571, 577 (1919) (Brandeis, J.). More specifically, several federal cases -- Moorman v. Wood, 504 F. Supp. 467, 473, 477 (E.D. Ky. 1980); Doyle v. Municipal

[Footnote continued]

The out-dated case of Hunter v.

[Continued from previous page]

Commission of Minnesota, 340 F. Supp. 841, 844 (D. Minn.), aff'd, 468 F.2d 620 (8th Cir. 1972); and Adams v. City of Colorado Springs, 308 F. Supp. 1397, 1405 (D. Colo.), aff'd, 399 U.S. 901 (1970) -- expressly state that annexations and annexation procedures are governed by due process principles and that arbitrary annexations run afoul of the Fourteenth Amendment.

Various authoritative, well-reasoned state cases also have held that an arbitrary annexation violates the due process clause of the Fourteenth Amendment. See Nevada ex rel. Bibb v. City of Reno, 64 Nev. 127, 178 P.2d 366, 368 (1947) ("an annexation which is arbitrary, unreasonable, unjust and unnecessary will be held invalid"); Texas ex rel. Walker v. City of Gladewater, 139 S.W.2d 283, 286 (Tex. Civ. App. 1940) (attempted annexation was "arbitrary, unreasonable and violative of the inhibitions of [the] Federal Constitution . . . amend. 14."); Portland General Electric Co. v. City of Estacada, 194 Or. 145, 241 P.2d 1129, 1135 (1952); Florida ex rel. Davis v. City of Stuart, 97 Fla. 283, 120 So. 335, 345 (1929).

City of Pittsburgh, 207 U.S. 161 (1907), upon which the Fourth Circuit principally relied, no longer mandates the conclusion that the due process clause does not prohibit an arbitrary annexation. Hunter actually adjudicated a rather narrow issue: whether the citizens of one municipality may defeat by their vote annexation by another municipality. However, the Hunter Court, in dicta, broadly declared that annexation by a city or town is purely a state political matter, entirely within the power of the state legislature to regulate, and that a state "at its pleasure" without constitutional restraints could alter municipal boundaries. 207 U.S. at 178-79. It was those dicta that the Fourth Circuit elevated into a constitutional principle.

This Court recognized in Holt Civic Club v. City of Tuscaloosa, 439 U.S. 60, 71 (1978), that -- while Hunter remains significant in emphasizing the considerable latitude that states have in structuring their political subdivisions -- "the broad statements as to state control over municipal corporations contained in Hunter have undoubtedly been qualified by the holdings of later cases" such as Kramer v. Union Free School District, 395 U.S. 621 (1969) (emphasis added).6/

Another case restricting Hunter is Gomillion v. Lightfoot, 364 U.S. 339 (1960), which declares that a municipal

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6/ Kramer held that the Fourteenth Amendment's equal protection clause prohibits discrimination where voting rights are concerned.

boundary change "lies within the scope of relevant limitations imposed by the United States Constitution." 364 U.S. at 344-45. This case, which invalidated discriminatory boundary adjustments in Tuskegee, Alabama, was decided under the Fifteenth, not the Fourteenth, Amendment. Nonetheless, numerous courts, including this Court, have recognized that Gomillion's broad language pertains to constitutional limitations found in the Fourteenth Amendment. See, e.g., Reynolds v. Sims, 377 U.S. 533, 566 (1964); Hayward v. Clay, 573 F.2d 187, 190 (4th Cir.), cert. denied, 439 U.S. 959 (1978); Garren v. City of Winston-Salem, 463 F.2d 54, 56 (4th Cir. 1972); Doyle v. Municipal Commission of Minnesota, 340 F. Supp. 841, 843 (D. Minn.), aff'd, 468 F.2d 620 (8th Cir.

1972); Adams v. City of Colorado Springs, 308 F. Supp. 1397, 1400-01 (D. Colo.), aff'd, 399 U.S. 901 (1970); City of Birmingham v. Community Fire District, 336 So. 2d 502, 507 (Ala. 1976). That Hunter's sweeping dicta no longer constitute good law is established in great detail in the petition for certiorari in the present case (pp. 13-32).

In sum, the Fourth Circuit's conclusion that the due process clause does not prevent arbitrary municipal annexations is contrary to extant constitutional law set forth in "modern" decisions of the Court. Moreover, the Fourth Circuit's decision conflicts with decisions in other circuits that plainly recognize that an arbitrary, capricious annexation violates the due process

clause. See supra note 5, at 10-11. For these reasons the petition for certiorari should be granted.

2. The North Carolina Annexation Statute Prohibiting Review of Allegedly Unconstitutional Conduct Raises Major Due Process Questions.

The Fourth Circuit declined to hold that the North Carolina annexation statute unconstitutionally restricts judicial review. This action also disregarded basic constitutional law recognized by this Court, and thus the petition for certiorari should be granted on that issue.

In various recent decisions, the North Carolina Supreme Court has held that, under N.C. Gen. Stat. § 160A-50(f), state courts may review an annexation to determine only if certain easily adhered to statutory requirements

are met.7/ Under these opinions, however, state courts may not separately examine an annexation to determine if it is arbitrary and unreasonable, and thus unconstitutional.

Most prominent in this regard is In Re Annexation Ordinance, 303 N.C. 220, 278 S.E.2d 224 (1981), which involved annexations by Winston-Salem before this Court. In the state case the plaintiffs (who are not before this Court) presented evidence demonstrating that the annexations were arbitrary, unreasonable and improperly motivated. The

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7/ Section 160A-50(f) provides the only means to challenge annexations in the North Carolina state courts. E.g., Moody v. Town of Carrboro, 301 N.C. 318, 271 S.E.2d 265 (1980); Taylor v. City of Raleigh, 290 N.C. 608, 227 S.E.2d 576 (1976); Gaskill v. Costlow, 270 N.C. 686, 155 S.E.2d 148 (1967).

Superior Court, however, declined to consider such evidence and excluded similar evidence.

The North Carolina Supreme Court affirmed the lower court, stating:

> The superior court's review of the annexation ordinance of a municipal governing body is limited by statute. Upon review the judge may examine the annexation proceedings to determine only whether the municipal governing board substantially complied with the requirements of the applicable annexation statutes . . . .
>
> G.S. 160A-50(f) provides in effect that on judicial review the court may hear oral arguments, receive written briefs, and may take evidence intended to show,
>
> (1) that the statutory procedure was not followed, or
>
> (2) that the provisions of G.S. 160A-47 [concerning required documents and plans for city services] were not met, or

> (3) that the provisions of G.S. 160A-48 [concerning whether an area meets very flexible criteria regarding, e.g., population density, lot size and contiguousness] have not been met.
>
> This section clearly specifies the inquiries to which the court is limited.

278 S.E.2d at 230-31 (emphasis added).

The court concluded that state courts could not separately examine the "reasonableness" of an annexation. 278 S.E.2d at 231. And it said:

> The legislature has the right, unhampered by constitutional restrictions, to grant the power given in the annexation statute under consideration to municipalities having a population of five thousand or more since the power is incidental to municipal government in matters of purely local concern.

278 S.E.2d at 228 (emphasis added).8/

8/ The provision specifying a state court's options if it finds an

[Footnote continued]

To the same effect are Food Town Stores v. City of Salisbury, 300 N.C.

[Continued from previous page]

annexation faulty -- N.C. Gen. Stat. 160A-50(g) -- is also significant. Under this provision, a court may only:

(1) Remand so that proper procedures can be followed, if petitioners were "materially injured" by the failure to do so;

(2) Remand for amendment of annexation boundaries to adhere to the statutory provision specifying the nature of the area that can be annexed; or

(3) Remand for amendment of the plans for provision of city services to meet statutory standards.

Invalidation of an annexation because it is arbitrary or unreasonable is not allowed by this provision. As In Re Annexation Ordinance illustrates, North Carolina courts have considered whether the annexation statute is constitutional, but they will not review the conduct of city officials to determine whether they have acted unconstitutionally. See 278 S.E.2d at 229-32.

21, 265 S.E.2d 123 (1980), Moody v. Town of Carrboro, 301 N.C. 318, 271 S.E.2d 265, 268 (1980), and Humphries v. City of Jacksonville, 300 N.C. 186, 265 S.E.2d 189, 190 (1980). Moreover, in the two Charlotte cases before this Court, the district court agreed that, under the North Carolina statute, state petitioners may argue only that the statutory criteria have not been met, but may not separately contend that an annexation is arbitrary and thus unconstitutional. See Cert. App. C.

The result of the North Carolina Supreme Court decisions is that, for example, the following unconstitutional actions totally escape judicial scrutiny in North Carolina state courts:

a. An arbitrary gerrymandering of annexation borders, solely to

gain tax revenues, to include large amounts of agricultural land that are not developed for urban purposes and need no city services.

b. An arbitrary attempt to annex an area to dilute a city's black vote and thus retain political power for white incumbents.

c. Abusive conduct by authorities who accept bribes to vote for an annexation.

It is well-settled, however, that the due process clause of the Fourteenth Amendment requires that parties allegedly injured by unconstitutional state conduct be given access to the state courts, that those courts pass judgment on this conduct, and that they give redress to persons injured by such actions. This proposition is

established, for example, by Ohio Valley Water Co. v. Ben Avon Borough, 253 U.S. 287 (1920). There a state utility commission, finding that a water company's rates were unreasonably high, reduced them. The Pennsylvania Supreme Court upheld the commission's action, but on appeal this Court reversed.

The Court first decided that the state Supreme Court had interpreted the rate setting statute to preclude judicial review of the constitutional question involved: "[W]e are compelled to conclude that the [Pennsylvania] Supreme Court interpreted the statute as withholding from the courts power to determine the question of confiscation according to their own independent judgment when the action of the Commission comes to be considered on appeal." 253 U.S. at 289.

The Court then held that a denial of the opportunity for review of constitutional questions was itself a denial of due process of law: "[I]f the owner claims confiscation of his property will result, the State must provide a fair opportunity for submitting that issue to a judicial tribunal for determination upon its own independent judgment as to both law and facts; otherwise the order is void because in conflict with the due process clause, Fourteenth Amendment." Id. Reversal was required because "[t]hus far [the water company] has not succeeded in obtaining the review . . . which the Fourteenth Amendment requires the state to provide." Id.

In St. Joseph Stock Yards Co. v. United States, 298 U.S. 38, 49-54

(1936), which involved a Department of Agriculture rate order, the Court recognized a Fifth Amendment due process right to judicial review of constitutional questions arising in federal administrative proceedings. In a well-known concurring passage, Justice Brandeis said: "The supremacy of law demands that there shall be opportunity to have some court decide whether an erroneous rule of law was applied; and whether the proceeding in which facts were adjudicated was conducted regularly. To that extent, the person asserting a right, whatever its source, should be entitled to the independent judgment of a court on the ultimate question of constitutionality." 298 U.S. at 84. See also Chicago, M. & St. P.R. Co. v. Minnesota, 134 U.S. 418

(1890) (state statute prohibiting judicial review of railroad rates set by commission denied due process of law); Hurtado v. California, 110 U.S. 516, 534-35 (1884).9/

Also pertinent are the various federal decisions that have construed administrative statutes to allow judicial review to avoid the constitutional question that failure to provide review would raise.10/ For example, in Johnson v. Robison, 415 U.S. 361 (1974), where the constitutionality of a veterans benefit statute was challenged, the government contended that judicial review was barred by a provision

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9/ Cf. Logan v. Zimmerman Brush Co., 455 U.S. 422, 432-33 (1982).

10/ See Crowell v. Benson, 285 U.S. 22, 62 (1932).

purporting to render all administrative decisions final and unreviewable. Noting that a construction foreclosing constitutional challenges to the act would "raise serious questions concerning the constitutionality" of that statute, this Court read the statute to permit judicial review of such claims. 415 U.S. at 366. See also Ralpho v. Bell, 569 F.2d 607, 618-22 (D.C. Cir. 1977) (Micronesian Claims Act interpreted to allow judicial review of Claims Commission rulings allegedly offending due process to avoid constitutional question that denial of review would present);11/ Ungar v. Smith, 667

11/ The court said: "If the courts are disabled from requiring administrative officials to act constitutionally, it is difficult to see who would perform that function." 569 F.2d at 620.

F.2d 188, 193 (D.C. Cir. 1981) (statute interpreted to allow judicial review of claims that Department of Justice violated due process in order not "to court the constitutional dangers inherent in denying a forum" in which to challenge department's actions).12/

Not surprisingly, even where no statute provided for review, various

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12/ State courts have also held that review of allegedly arbitrary administrative action is constitutionally required. See Kendall v. Beiling, 245 Ky. 782, 783, 175 S.W. 2d 489, 491 (1943); Butterworth v. Boyd, 12 Cal. 2d 140, 144, 82 P.2d 434, 439 (1938); American Beauty Homes Corp. v. Louisville, 379 S.W.2d 450, 456-57 (Ky. 1964); State v. Northern Pac. Ry. Co., 229 Minn. 312, 39 N.W.2d 752 (1949). These decisions at times rest on state constitutional provisions rather than on the Fourteenth Amendment, but nonetheless speak persuasively to the dictates of due process.

state courts have felt compelled to examine annexations alleged to be arbitrary and thus contrary to due process. See Nevada ex rel. Bibb v. City of Reno, 64 Nev. 127, 178 P.2d 366, 368 (1947); Texas ex rel. Walker v. City of Gladewater, 139 S.W.2d 283, 286 (Tex. Civ. App. 1940); Florida ex rel. Davis v. City of Stuart, 97 Fla. 283, 120 So. 335, 345 (1929); Portland General Electric Co. v. City of Estacada, 194 Or. 145, 241 P.2d 1129, 1135 (1952); Pyle v. City of Shreveport, 215 La. 257, 40 So. 2d 235, 242 (1949).13/

13/ See also as to the judicial review required in deannexation proceedings, Kel-Kan Investment Corp. v. Village of Greenwood, 393 So. 2d 818, 820-21 (La. Ct. App. 1981); West Point Island Civic Ass'n v. Township Committee, 54 N.J. 339, 255 A.2d 237, 240-41 (1969).

Unlike courts that have been able to construe statutes to permit judicial review, this Court is unable through statutory construction to avoid the constitutional question. As has been admitted by defendants, the North Carolina Supreme Court's definitive interpretation of N.C. Gen. Stat. § 160A-50(f) is binding on the federal courts. This Court thus should allow the petition for certiorari and apply the uncontestable principle that a state statute interpreted by a state's highest court to deny judicial review of constitutional claims is itself unconstitutional.14/

14/ Because courts in other states will review allegations of unconstitutional conduct in annexation proceedings, the principal result of a ruling for petitioners in this case would be to force North Carolina

[Footnote continued]

CONCLUSION

For the reasons presented, the petition for certiorari should be granted as to both issues presented in this case.

Respectfully submitted,

Eugene Gressman
School of Law
University of North Carolina
Chapel Hill, N.C. 27514
(919) 962-4120

Attorney for Amici Curiae North Carolina Farm Bureau Federation, Inc., et al.

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[Continued from previous page]

courts similarly to hear constitutional questions. A ruling for petitioners here thus would not provoke more federal litigation, but would only compel North Carolina courts to act in constitutional fashion.

APPENDIX A
DESCRIPTION OF AMICI CURIAE[1]

1. North Carolina Farm Bureau Federation, Inc.

This organization, the largest agricultural organization in North Carolina, represents more than 224,000 farm family members (including at least 400,000 persons). It was formed in 1936 and has a chapter in each county in North Carolina. It opposes annexation of farm land for arbitrary reasons, such as where a city annexes for no purpose other than to increase its tax revenues.

2. North Carolina State Grange

This organization has 10,000 North Carolina citizens as members. It opposes annexation of farm lands for arbitrary reasons.

1/ All municipalities referenced are North Carolina municipalities.

3. Winston-Salem Chapter of NAACP

This organization, which has 4,000 North Carolina citizens as members, generally opposes annexations that focus on predominantly white areas and thus dilute the effectiveness of the votes of black city residents.

4. Citizens Opposed to Annexation by Valdese

This group represents 900 residents in the Valdese area whose properties were either annexed in 1982 or now are under threat of imminent annexation by that municipality.

5. Forsyth Citizens Opposing Annexation, Inc. -- Chapter II

This group represents 9,748 citizens living near Winston-Salem. It opposes an August 1, 1983 decision by the city's Board of Aldermen to annex six additional areas adjacent to that city.

6. Franchised Garbage Collectors of Forsyth County

This organization serves 18,000 citizens and opposes consummated or threatened annexations by Winston-Salem (including those objected to by the Forsyth Citizens group) that have caused or likely will cause severe economic hardship to privately-owned garbage collecting services operating in county areas.

7. Shasta Lane Citizens Opposing Annexation

This group represents 25 citizens living in an area annexed by Hudson, which for several years has failed to provide services to the annexed area, but nonetheless seeks to impose city taxes on area residents for the entire period since the annexation became effective.

8. North Albemarle Community Association

This group represents 700 citizens whose property was recently annexed by Albemarle.

9. Rural Gilford TEA Party

This group represents 3,200 citizens living in areas annexed by High Point in June 1983.

10. Opponents of Forced Annexation, Inc.

Some 15,000 citizens are represented by this group that was formed as a result of Greensboro's 1981 attempt to annex this area. This matter is still in litigation in state courts.

11. New Hanover Right to Vote Association

Eight thousand citizens are represented by this group, which was formed in 1977 to oppose annexation attempts by Wilmington. The annexations involved

are now being challenged in state courts.

12. Crowfields Condominium Association
Western Carolina Industries, Inc.
Ballentree Homeowners Association, Inc.
South Side Shopping Center
Skyline Sanitary Service

These entities, which together represent and serve some 1,350 citizens, oppose recent annexations by Ashville. The Skyline Sanitary Service may be forced out of business by the city's actions.

13. Save Our Suburbs

This organization represents 133 citizens and opposes a threatened annexation by Tryon.

14. N.C. League of Concerned Citizens

This group represents 300 citizens and opposes a recently consummated annexation and an attempted annexation by Newton.

15. Concerned Citizens Against Involuntary Annexation

This group represents some 150 citizens whose property was annexed by Conover in June, 1982.

16. Citizens For Fair Growth

This organization represents 690 citizens and opposes an annexation by Salisbury that is being challenged in state courts.

17. Gaston County Taxpayers Association

This group, which has 3,000 members who are residents of Gaston County, opposes forced annexations. It coordinates the efforts of and educates North Carolina citizens -- particularly those in Gaston County -- who desire to prevent unwanted annexations.

18. Burke County Property Owners and Taxpayers Association

Six hundred citizens are members of this group, which is associated with the Gaston County Taxpayers Association and opposes annexations in Burke County.

19. Little Yellow Mountain Property Owners Association

This group represents 100 citizens and opposes a recent annexation by the Highlands effected after lengthy litigation.

20. People of Oak Hill Against Forced Annexation

This group represents 1,940 citizens from a community near Morgantown, which apparently intends to annex the community within the next several years.

21. Cumberland County Fire Chiefs Association

This group has some 800 members from Cumberland County, where

municipalities are preparing for annexations. Volunteer fire departments in the county are concerned that annexations will force them out of existence.

22. Opponents of Forced Annexation

This group has 500 members who are citizens of areas adjacent to Mebane, which the city decided to annex in January 1983. This matter is now pending in North Carolina superior court.